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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,804	08/09/2001	Christopher M. Black	1251.01.1	2556

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Melvin K. Silverman  
Suite 500  
500 WEST CYPRESS CREEK ROAD  
FORT LAUDERDALE,, FL 33309

EXAMINER

RUHL, DENNIS WILLIAM

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/924,804

Applicant(s)

BLACK ET AL.

Examiner

Dennis Ruhl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

1. The examiner takes notice of and accepts the claim for priority under 35 USC 119(e).

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claim 1, the examiner is not clear as to the scope of part d). Is the means language referring to software that formats data, etc. or the hardware that runs the software? Upon a review of the instant specification for guidance on the scope of the means plus function language, it is not clear what scope is to be attributed to the language in question. Clarification and/or correction is requested. In part e) the same issue is present, what is the scope of the means plus function recitation (software or hardware)? Portion f(iii) is considered indefinite for a number of reasons. There is no antecedent basis for "said means (ii)". What means is this? The portion that reads "selectable including either said server ranking of means (ii), rotation, or a random function" is considered indefinite. Rotation of what? What does the word rotation mean? What is meant by "or a random function referring to"?

For claim 3, what does the recitation of "said (f)(ii)" refer to? Is this supposed to be "said means for applying combinations"?

For claim 7, the examiner is not clear as to the scope of the means language of part b). Is the means language referring to software that formats data, etc. or the hardware

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that runs the software? Upon a review of the instant specification for guidance on the scope of the means plus function language, it is not clear what scope is to be attributed to the language in question. Clarification is requested.

For claim 8, what does the recitation of "said mean (ii)" refer to? This is not clear.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (6134534).

For claims 1,7,8,9,10, Walker discloses a system that is capable of performing as claimed and does what applicant has claimed. Walker discloses a remote client computer 110, a remote service provider computer 300, and a host computer/server 100,200. All three computers are capable of operating as claimed. The host server has means to acquire data, format data, and form a reservation record, etc., as claimed. Walker discloses that the system of their invention is programmed with software to perform various commands and steps. Walker discloses software that selects a service provider as claimed. Walker discloses a 2<sup>nd</sup> data structure (service providers) 700, means to apply client criteria (see column 5, lines 21-36), and means to apply host

server criteria (see column 19, line 62 to col.20, line 14). Walker discloses a means to resolve ties between providers (see col. 20, ln 25-40). Walker discloses a means to advise a selected provider of their selection and to obtain confirmation of acceptance (see col. 20, ln 15-24). In column 21, ln 18-23 Walker discloses a means to reiterate use of the software program if no result is found upon initial running of the query.

Walker discloses that the accepted reservations are entered into a 3<sup>rd</sup> data structure (booking of the reservation and "PNR", see col. 20, ln 41-51). Walker advises the client of the result of their bid and tells them the accepted providers as claimed. Applicant should take notice that with respect to the limitations directed to the system being a "ground transportation system" and the limitations directed to client criteria being vehicle type, vehicle availability, etc.. this is considered to be non-functional descriptive material and does not serve as a limitation (*In re Gulack*, 217 USPQ 401 (CAFC 1983)).

The system of Walker operates as claimed and the fact that Walker deals with cruises and airlines as opposed to "ground transportation" does not render the currently pending system claims patentable in view of Walker.

For claim 2, Walker inherently discloses a graphical user interface. The examiner comes to this conclusion because in view of col. 7, lines 53-63 it is clear that to be able to use a personal computer you must have some sort of graphical user interface that allows the user to see results, etc.. A graphical user interface (LCD monitor, flat screen, or even a tape readout of numbers from a printer) would inherently be found in the personal computer described by Walker in column 7.

For claim 3, the customer database of Walker satisfies what is claimed. Applicant is reminded that the specific type of data and what variable the data represents is considered to be non-functional descriptive material and does not serve to distinguish over Walker.

For claims 4,7, applicant is reciting how data transfer occurs (a method step) but has failed to recite anything further structurally to the system. The system of Walker is fully capable of transferring data as claimed and satisfies what is claimed.

For claim 5, Walker discloses a system that satisfies what is claimed. Walker discloses that the client computer 110 can be that of a travel agent that has dedicated database systems (i.e. Apollo, Sabre, etc.). By reciting that the user computer is a travel Legacy system, this is still more or less reciting a computer and an associated database, which is satisfied by Apollo, Sabre, etc. The type of data the system stores is again considered to be non-functional descriptive material so there is no difference between claiming an Apollo system versus a Legacy system.

For claim 6, see column 9, lines 6-18 where the claimed limitation is disclosed.

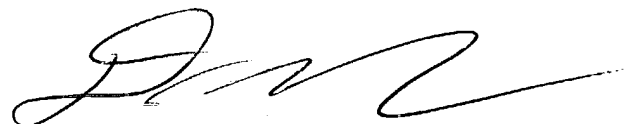
For claim 11, the system of Walker allows a client to input desired search criteria remotely from their computer that the software will use during search execution.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Keller et al. (US2001/0053989) discloses a computer implemented system and process for purchasing an airline ticket that is very relevant to the claims as originally filed.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DENNIS RUHL  
PRIMARY EXAMINER